

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

CODEMASTERS GROUP HOLDINGS
LIMITED, a foreign corporation,

Plaintiff,

v.

SOUTHPEAK INTERACTIVE
CORPORATION, a Delaware Corporation,

Defendant.

Civil Action No.: 3:11-cv-068 (JRS)

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
ORIGINALLY FILED COMPLAINT**

This action was commenced on January 26, 2011, when Plaintiff Codemasters Group Holdings Limited ("Codemasters") filed its Complaint against Defendant Southpeak Interactive Corporation ("Southpeak"). [Doc. No. 1.] The initial date for Southpeak's response was February 22, 2011, which was later extended to March 1, 2011 pursuant to the Court's Order. [Doc No. 8.] On March 1, 2011, Southpeak filed a motion to dismiss Codemasters' Complaint pursuant to Fed. R. Civ. P. 12(b)(3). [Doc. No. 11.] Thereafter, on March 10, 2011, Codemasters filed, as of right, its First Amended Complaint.¹ [Doc. No. 14.]

Southpeak's motion to dismiss the original Complaint must be denied as moot because the motion is directed to a pleading that is no longer operative. Codemasters' First Amended Complaint supersedes the originally filed complaint and renders it moot and of no legal effect. See *Sanford v. Virginia*, 2009 WL 2421544, at *2 (E.D.Va. 2009) (citing *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir.2001)). Moreover, Southpeak's filing of a motion to dismiss did not remove Codemasters' right to amend the Complaint as a matter of course under Rule 15. That Rule provides, in pertinent part, that "[a] party may amend its pleading once as a matter of

¹ While Southpeak's motion to dismiss centers on a jurisdiction clause in the parties' original settlement agreement, the First Amended Complaint more fully sets forth why that clause does not apply to this matter due to the parties' subsequent dealings and amendment to the settlement agreement.

course within: ... (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1)(B).

Codemasters filed its First Amended Complaint as of right on March 10, 2011, within the 21-day period permitted under Rule 15(a)(1)(B). Accordingly, the Court should deny the Southpeak's motion to dismiss the original Complaint as moot.

DATED: March 14, 2011

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2011, I electronically filed a copy of the foregoing to the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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